

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996)	
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other Customer Information;)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, As Amended)	
)	

REPLY COMMENTS OF VARTEC TELECOM, INC.

VarTec Telecom, Inc. ("VarTec") hereby submits these brief reply comments in response to Party Comments filed on November 1, 2001, in the above proceeding.

I.

In its initial comments, VarTec opposed the "opt-in" approach for carriers' use of Customer Proprietary Network Information ("CPNI"). Overwhelming, the commenters agree that the opt-out approach provides sufficient privacy protection and is the least restrictive approach on carriers' commercial free speech in line with the 10th Circuit's reasoning in *U.S. West, v. FCC*¹. With regards to the few comments in favor of an opt-in approach, it appears that the concerns raised by these commenters could more effectively be addressed by consumer education rather than a burdensome and costly opt-in approach. These parties argue that customers may not understand their CPNI notices or that consumers may not know that they have to take affirmative steps to prevent carrier

distribution of their CPNI if an opt-out approach is used thus, an opt-in method is more suitable for protecting consumer's privacy.² However, what these commenters point to as "ignorance" may merely be indifference. Many customers may not respond to opt-in notices because they do not feel strongly about the issue. As a result, savvy customers will be forced to bear the increased costs of services in order to protect customers who are indifferent. Furthermore, what these commenters fail to consider is that it makes good business sense for telecommunications carriers' to use CPNI in a responsible manner. Indeed, consumers have raised few complaints, if any, related to telecommunications carriers' use of their CPNI. With increased competition, consumers will have more and more options to choose the companies that best protect their privacy interest.

II.

Many commenters responded to the Commission's request to comment on whether there are any other laws or regulatory schemes governing matters similar to CPNI that the Commission might use as an analog. What is telling is that all the legislative schemes addressed, effectively, use the opt-out method. Again, VarTec would submit that there is no logical reason that telecommunications carriers should be held to a higher standard than any other industry.

III.

¹ *U.S. West, Inc. v. Federal Communications Commn*, 182 F. 3rd 1224, 1229 (10th Circ. 1999)

² See, Comments of the Electronic Privacy Information Center, American Civil Liberties Union, American Liberty Association, Center for Digital Democracy, Center for Media Education, Computer Professionals for Social Responsibility, Consumer Action, Consumer Federation of America, Junkbusters, Media Access Project, National Consumers League, NetAction, Privacy Activism, Privacy Journal, Privacy Rights Clearinghouse, Privacy Times, Public Citizen Litigation Group, and US PIRG in CC Dkt. Nos. 96-115 and 96-149 (Nov. 1, 2001) at pp. 4-5.

In addition, VarTec supports the comments filed by parties advocating reconsideration by the Commission of its decision in the *CPNI* Order that Section 272 does not impose any additional obligations on the BOCs with regards to the dissemination of CPNI. VarTec agrees with Nextel Communications, Inc. that, “given the BOC’s large customer base and store of CPNI, the resulting competitive disparity between the BOC’s affiliates and their competitors would implicate directly the purpose of Section 272.”³

IV.

WHEREFORE, for the foregoing reasons, VarTec Telecom, Inc. respectfully requests the Commission’s consideration of these reply comments.

Respectfully submitted,

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³ See, Comments of Nextel Communications, Inc., in CC Dkt. Nos. 96-115 and 96-149 (Nov. 1, 2001) at p. 12.

